

SENATE, No. 640

STATE OF NEW JERSEY

220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:
Senator DECLAN J. O'SCANLON, JR.
District 13 (Monmouth)

SYNOPSIS

Permits municipalities and counties to require requestor of government record to obtain records from agency website.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning access to government records on a public
2 agency website, and amending P.L.2001, c.404

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. Section 6 of P.L.2001, c.404 (C.47:1A-5) is amended to read
8 as follows:

9 6. a. The custodian of a government record shall permit the
10 record to be inspected, examined, and copied by any person during
11 regular business hours; or in the case of a municipality having a
12 population of 5,000 or fewer according to the most recent federal
13 decennial census, a board of education having a total district
14 enrollment of 500 or fewer, or a public authority having less than
15 \$10 million in assets, during not less than six regular business hours
16 over not less than three business days per week or the entity's
17 regularly-scheduled business hours, whichever is less; unless a
18 government record is exempt from public access by: P.L.1963, c.73
19 (C.47:1A-1 et seq.) as amended and supplemented; any other
20 statute; resolution of either or both houses of the Legislature;
21 regulation promulgated under the authority of any statute or
22 Executive Order of the Governor; Executive Order of the Governor;
23 Rules of Court; any federal law; federal regulation; or federal order.
24 Prior to allowing access to any government record, the custodian
25 thereof shall redact from that record any information which
26 discloses the social security number, credit card number, unlisted
27 telephone number, or driver license number of any person; except
28 for use by any government agency, including any court or law
29 enforcement agency, in carrying out its functions, or any private
30 person or entity acting on behalf thereof, or any private person or
31 entity seeking to enforce payment of court-ordered child support;
32 except with respect to the disclosure of driver information by the
33 New Jersey Motor Vehicle Commission as permitted by section 2 of
34 P.L.1997, c.188 (C.39:2-3.4); and except that a social security
35 number contained in a record required by law to be made,
36 maintained or kept on file by a public agency shall be disclosed
37 when access to the document or disclosure of that information is not
38 otherwise prohibited by State or federal law, regulation or order or
39 by State statute, resolution of either or both houses of the
40 Legislature, Executive Order of the Governor, rule of court or
41 regulation promulgated under the authority of any statute or
42 executive order of the Governor. Except where an agency can
43 demonstrate an emergent need, a regulation that limits access to
44 government records shall not be retroactive in effect or applied to
45 deny a request for access to a government record that is pending

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 before the agency, the council or a court at the time of the adoption
2 of the regulation.

3 b. (1) A copy or copies of a government record may be
4 purchased by any person upon payment of the fee prescribed by law
5 or regulation. Except as otherwise provided by law or regulation
6 and except as provided in paragraph (2) of this subsection, the fee
7 assessed for the duplication of a government record embodied in the
8 form of printed matter shall be \$0.05 per letter size page or smaller,
9 and \$0.07 per legal size page or larger. If a public agency can
10 demonstrate that its actual costs for duplication of a government
11 record exceed the foregoing rates, the public agency shall be
12 permitted to charge the actual cost of duplicating the record. The
13 actual cost of duplicating the record, upon which all copy fees are
14 based, shall be the cost of materials and supplies used to make a
15 copy of the record, but shall not include the cost of labor or other
16 overhead expenses associated with making the copy except as
17 provided for in subsection c. of this section. Access to electronic
18 records and non-printed materials shall be provided free of charge,
19 but the public agency may charge for the actual costs of any needed
20 supplies such as computer discs.

21 In the case of a municipality or a county, if the government
22 record is readily available on the municipal or county website, the
23 custodian may require the requestor to obtain the record from the
24 website. The custodian shall provide the website address, identify
25 each responsive document, and the specific location on the website
26 of each identified responsive document. The request shall be
27 deemed fulfilled upon notification by the custodian to the requestor
28 of the availability and location of each responsive document. If the
29 requestor does not have access to a computer or is unable to print
30 the requested record, the request shall be processed and fulfilled
31 pursuant to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.).

32 (2) No fee shall be charged to a victim of a crime for a copy or
33 copies of a record to which the crime victim is entitled to access, as
34 provided in section 1 of P.L.1995, c.23 (C.47:1A-1.1).

35 c. Whenever the nature, format, manner of collation, or volume
36 of a government record embodied in the form of printed matter to
37 be inspected, examined, or copied pursuant to this section is such
38 that the record cannot be reproduced by ordinary document copying
39 equipment in ordinary business size or involves an extraordinary
40 expenditure of time and effort to accommodate the request, the
41 public agency may charge, in addition to the actual cost of
42 duplicating the record, a special service charge that shall be
43 reasonable and shall be based upon the actual direct cost of
44 providing the copy or copies; provided, however, that in the case of
45 a municipality, rates for the duplication of particular records when
46 the actual cost of copying exceeds the foregoing rates shall be
47 established in advance by ordinance. The requestor shall have the

1 opportunity to review and object to the charge prior to it being
2 incurred.

3 d. A custodian shall permit access to a government record and
4 provide a copy thereof in the medium requested if the public agency
5 maintains the record in that medium. If the public agency does not
6 maintain the record in the medium requested, the custodian shall
7 either convert the record to the medium requested or provide a copy
8 in some other meaningful medium. If a request is for a record: (1)
9 in a medium not routinely used by the agency; (2) not routinely
10 developed or maintained by an agency; or (3) requiring a substantial
11 amount of manipulation or programming of information technology,
12 the agency may charge, in addition to the actual cost of duplication,
13 a special charge that shall be reasonable and shall be based on the
14 cost for any extensive use of information technology, or for the
15 labor cost of personnel providing the service, that is actually
16 incurred by the agency or attributable to the agency for the
17 programming, clerical, and supervisory assistance required, or both.

18 e. Immediate access ordinarily shall be granted to budgets,
19 bills, vouchers, contracts, including collective negotiations
20 agreements and individual employment contracts, and public
21 employee salary and overtime information.

22 f. The custodian of a public agency shall adopt a form for the
23 use of any person who requests access to a government record held
24 or controlled by the public agency. The form shall provide space
25 for the name, address, and phone number of the requestor and a
26 brief description of the government record sought. The form shall
27 include space for the custodian to indicate which record will be
28 made available, when the record will be available, and the fees to be
29 charged. The form shall also include the following: (1) specific
30 directions and procedures for requesting a record; (2) a statement as
31 to whether prepayment of fees or a deposit is required; (3) the time
32 period within which the public agency is required by P.L.1963, c.73
33 (C.47:1A-1 et seq.) as amended and supplemented, to make the
34 record available; (4) a statement of the requestor's right to challenge
35 a decision by the public agency to deny access and the procedure
36 for filing an appeal; (5) space for the custodian to list reasons if a
37 request is denied in whole or in part; (6) space for the requestor to
38 sign and date the form; (7) space for the custodian to sign and date
39 the form if the request is fulfilled or denied. The custodian may
40 require a deposit against costs for reproducing documents sought
41 through an anonymous request whenever the custodian anticipates
42 that the information thus requested will cost in excess of \$5 to
43 reproduce.

44 g. A request for access to a government record shall be in
45 writing and hand-delivered, mailed, transmitted electronically, or
46 otherwise conveyed to the appropriate custodian. A custodian shall
47 promptly comply with a request to inspect, examine, copy, or
48 provide a copy of a government record. If the custodian is unable

1 to comply with a request for access, the custodian shall indicate the
2 specific basis therefor on the request form and promptly return it to
3 the requestor. The custodian shall sign and date the form and
4 provide the requestor with a copy thereof. If the custodian of a
5 government record asserts that part of a particular record is exempt
6 from public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.)
7 as amended and supplemented, the custodian shall delete or excise
8 from a copy of the record that portion which the custodian asserts is
9 exempt from access and shall promptly permit access to the
10 remainder of the record. If the government record requested is
11 temporarily unavailable because it is in use or in storage, the
12 custodian shall so advise the requestor and shall make arrangements
13 to promptly make available a copy of the record. If a request for
14 access to a government record would substantially disrupt agency
15 operations, the custodian may deny access to the record after
16 attempting to reach a reasonable solution with the requestor that
17 accommodates the interests of the requestor and the agency.

18 h. Any officer or employee of a public agency who receives a
19 request for access to a government record shall forward the request
20 to the custodian of the record or direct the requestor to the
21 custodian of the record.

22 i. (1) Unless a shorter time period is otherwise provided by
23 statute, regulation, or executive order, a custodian of a government
24 record shall grant access to a government record or deny a request
25 for access to a government record as soon as possible, but not later
26 than seven business days after receiving the request, provided that
27 the record is currently available and not in storage or archived. In
28 the event a custodian fails to respond within seven business days
29 after receiving a request, the failure to respond shall be deemed a
30 denial of the request, unless the requestor has elected not to provide
31 a name, address or telephone number, or other means of contacting
32 the requestor. If the requestor has elected not to provide a name,
33 address, or telephone number, or other means of contacting the
34 requestor, the custodian shall not be required to respond until the
35 requestor reappears before the custodian seeking a response to the
36 original request. If the government record is in storage or archived,
37 the requestor shall be so advised within seven business days after
38 the custodian receives the request. The requestor shall be advised
39 by the custodian when the record can be made available. If the
40 record is not made available by that time, access shall be deemed
41 denied.

42 (2) During a period declared pursuant to the laws of this State as
43 a state of emergency, public health emergency, or state of local
44 disaster emergency, the deadlines by which to respond to a request
45 for, or grant or deny access to, a government record under
46 paragraph (1) of this subsection or subsection e. of this section shall
47 not apply, provided, however, that the custodian of a government
48 record shall make a reasonable effort, as the circumstances permit,

- 1 to respond to a request for access to a government record within
2 seven business days or as soon as possible thereafter.
- 3 j. A custodian shall post prominently in public view in the part
4 or parts of the office or offices of the custodian that are open to or
5 frequented by the public a statement that sets forth in clear, concise
6 and specific terms the right to appeal a denial of, or failure to
7 provide, access to a government record by any person for
8 inspection, examination, or copying or for purchase of copies
9 thereof and the procedure by which an appeal may be filed.
- 10 k. The files maintained by the Office of the Public Defender
11 that relate to the handling of any case shall be considered
12 confidential and shall not be open to inspection by any person
13 unless authorized by law, court order, or the State Public Defender.
14 (cf: P.L.2020, c.10, s.1)

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16 2. This act shall take effect immediately.
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19 STATEMENT
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21 Under current law, if a person requests records from a
22 municipality or a county that are on that public agency's website,
23 the custodian cannot require the requestor to utilize the website to
24 obtain the requested records.

25 This bill permits a municipal or county records custodian to
26 require the requestor to obtain the record from that agency's
27 website when the information is readily available on the website.
28 The custodian must provide the website address, identify each
29 responsive document, and the specific location on the website of
30 each identified responsive document. The request will be deemed
31 fulfilled upon notification by the custodian to the requestor of the
32 availability and location of each responsive document. If the
33 requestor does not have access to a computer or is unable to print
34 the requested record, the request shall be processed and fulfilled
35 pursuant to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.),
36 commonly referred to as the open public records act.